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Using Cameras to Audio Record or Video Record Neighbors

It has come to the attention of this office that some residents have voiced concerns regarding the legality of individuals audio recording and/or videotaping their neighbors across property lines. In summary, audio recording of conversations without consent is illegal, unless the person making the recording is part of the conversation. Unlike audio recordings, video recordings are much less regulated by law. Unless video recordings include audio or are recording subject matter that would fall under an expectation of privacy, there are very few legal restrictions.

Please be advised as follows regarding criminal law and civil law relating to the use of cameras at a person's residence.

I. Criminal Statutes.

There are very few provisions in the federal or Ohio criminal code relating to the use of video cameras by private parties to view or record outdoor areas of a neighbor's property. Almost exclusively, if the recording does not include audio recording, such recording is not a crime. The unique circumstances in which video recording alone might implicate sections of the criminal codes are summarized below. Further below is a summary of civil legal remedies for improper video recording by neighbors.

Under both Ohio and federal law, monitoring or interception of most audio communications is generally illegal – unless, for example, the person recording the communication is a party to the communication.¹ Under the Ohio Revised Code Section 2933.52, it is generally a crime to intercept or record any "wire, oral, or electronic communication." The definitions of these terms include nearly all communications and overlap with each other greatly. O.R.C. Section 2933.51, in part, defines these terms as follows:

"Wire communication" means an aural transfer that is made in whole or in part through the use of facilities for the transmission of communications by

¹ There are many other exceptions to this general prohibition, most of which are not relevant to this summary.

the aid of wires or similar methods . . . , if the facilities are furnished or operated by a person engaged in providing or operating the facilities for the transmission of communications.

"Oral communication" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation. "Oral communication" does not include an electronic communication.

"Electronic communication" means a transfer of a sign, signal, writing, image, sound, datum, or intelligence of any nature that is transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. "Electronic communication" does not mean any of the following: (1) A wire or oral communication;

These definitions do not include any reference to video recording. Under caselaw, video recordings are not considered "wire" or "electronic" communications for purposes of this statute.

Therefore, cameras that record video alone, are not in violation of this statute. However, a camera that records audio along with video will result in violation of the Ohio statute if recordings are made of the neighbors' conversations without their knowledge or consent.

Federal law includes a very similar provision to the Ohio Revised Code regarding electronic communications. The Electronic Communications Privacy Act of 1986, Title 18 U.S. Code § 2511 prohibits, among other things, interception of "wire, oral, or electronic communication". This federal code section, like the state code, does not include any prohibition of or reference to video recording. The federal statute, also, defines the terms "wire", "oral," and "electronic communication" in the same way as the state statute.

Similarly, under the federal code, cameras that record video alone, are not in violation of the law. However, a camera that records audio along with video will result in violation of the federal statute if recordings are made of the neighbors' conversations without their knowledge or consent.

As far as the Ohio Revised Code, or the United States Code, there is no criminal statute specifically outlawing the use of video cameras to record what is outside in an open area of a person's yard. This assumes that the cameras in question are not, also, recording audio. Audio recording with outdoor security cameras is generally illegal, subject to the exceptions mentioned above.

Having said that, the Ohio Revised Code prohibits conduct that could certainly include the use of a security camera. For example, O.R.C. Section 2907.08 makes "voyeurism" a crime. This offense is a misdemeanor of the second degree, carrying a possible 60-day jail sentence and a \$750.00 fine. As it requires that an offender "surreptitiously invade the privacy of another", this statute would likely not always apply

to a recording made of an outdoor area, such as a yard or driveway. Further, this statute contemplates that the video recording is being done for a sexual purpose. Simply monitoring and recording a neighbor outdoors would not violate this statute. On the other hand, if a security camera records the interior of a bedroom or bathroom, it might well be concluded that the recording was for a sexual purpose.

There is otherwise no statute or City of Parma ordinance that specifically prohibits the use of cameras to view or record the outdoor areas of a neighboring property. As cameras are being used more and more frequently by homeowners and have become much more powerful and technically sophisticated, Parma and other cities may very likely have to legislate new law in this area.

II. Civil Remedies

From a civil law perspective, the State of Ohio recognizes what is known as the tort of "intrusion upon seclusion." Described another way, it can be defined as the wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities. One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person. The invasion of privacy must involve the viewing of affairs that are private and not in public view.

In Ohio, the tort of invasion of privacy has been broken down in to four different specific types of claims. The one cause of action which is relevant here is "intrusion into plaintiff's seclusion, solitude, or private affairs." Ohio law recognizes the tort of invasion of the right to privacy for "the wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities." "One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person."

More specifically, our court of appeals has ruled that video recording neighbors on their property is actionable as an intrusion in to that neighbor's privacy. The Eighth District Court of Appeals ruled that Ohio law allowed the plaintiffs to bring a civil claim against neighbors who were "videotaping and photographing them on numerous occasions while they 'are in their own backyard.'" Among other factual assertions, the plaintiffs in that case alleged, contrary to the defendants' claims, that cameras were deliberately moved to and used from vantage points so as to view their yard from over a fence.

Therefore, it is clear that Ohio law provides for a fairly specific civil cause of action against a person videotaping a neighbor on that neighbor's own property. It does seem that the manner in which the cameras are being used matters, meaning incidental views of parts of the neighboring property would likely not give rise to a valid lawsuit. Instead, grounds for suit exist where a person is intentionally using cameras to watch or video

record neighbors while on their own property, in areas where they reasonably expect privacy.

Conclusion

To be sure, audio recording by security cameras are generally illegal under the Ohio Revised Code. There is no specific state criminal statute or city ordinance directly addressing the use of video cameras on private property to video record neighbors – outdoors-- on the neighbors' property. Intentionally pointing the camera into a private bedroom or bathroom for the purpose of sexual gratification, however, may implicate the laws which prohibit voyeurism.

Private civil remedies are available to address persistent, improper video recording by a neighbor, under Ohio law. A civil stalking protection order can be obtained, and a lawsuit for damages can be filed for invasion of privacy by the aggrieved neighbor, depending on the facts and circumstances.